

BENNIE ISABELL §
v. § CIVIL ACTION NO. 6:14cv164
DIRECTOR, TDCJ-CID §

The Petitioner Bennie Isabell, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Isabell was convicted of the offense of aggravated assault on January 31, 1995, receiving a sentence of 60 years in prison. He did not take a direct appeal, but filed a state habeas corpus application on January 22, 2013. The Texas Court of Criminal Appeals ordered the state district court to make findings of fact and conclusions of law. After these were entered, the Court of Criminal Appeals denied Isabell's state habeas application without written order on the findings of the trial court without a hearing on October 20, 2013. Isabell signed his federal habeas corpus petition on March 6, 2014.

The Respondent filed an answer urging that Isabell’s petition be dismissed as barred by the statute of limitations. Isabell did not file a response to the answer.

After review of the pleadings, the magistrate judge issued a report recommending that the petition be dismissed as barred by limitations. Isabell received a copy of this report on March 16,

2016, but filed no objections thereto; consequently, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the report of the magistrate judge. Upon such review, the Court has determined that the report of the magistrate judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a magistrate judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the report of the magistrate judge (docket no. 27) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is **DISMISSED WITH PREJUDICE**. It is further

ORDERED that the Petitioner Bennie Isabell is **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

SIGNED this 22nd day of April, 2016.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE